

## **JUDGE STEWART DALZELL**

Judge Dalzell was born on September 18, 1943 in Hackensack, New Jersey. He received a B.S. in Economics from the University of Pennsylvania, Wharton School, in 1965. He thereupon worked at the National Broadcasting Company in New York City before returning to the University of Pennsylvania Law School, from which he received a J.D. in 1969. Judge Dalzell then was a Visiting Lecturer in Law at the Wharton School at the University of Pennsylvania for one year before entering the private practice of law in Philadelphia in June of 1970. He was appointed to the United States District Court for the Eastern District of Pennsylvania on September 16, 1991.

### **PRELIMINARY GENERAL MATTERS**

#### **1. Correspondence with the Court.**

Judge Dalzell permits correspondence for scheduling an extension of time, but discourages correspondence that raise substantive issues that should be brought to the Court's attention by motion. See Fed. R. Civ. P. 7(b)(1). All correspondence should include the Action Number of the case.

#### **2. Communications with Law Clerks.**

Judge Dalzell permits communications with his law clerks concerning administrative aspects of cases but never on the merits of cases. Scheduling matters or requests for extensions of time should initially be directed to his Courtroom Deputy.

#### **3. Telephone Conferences.**

Judge Dalzell rarely holds telephone conferences. All pretrial conferences are held in person.

#### **4. Oral Arguments and Evidentiary Hearings.**

Judge Dalzell does not set aside certain days or hours for oral arguments or evidentiary hearings.

5. Pro Hac Vice Admissions.

Judge Dalzell has no preference as to how counsel present requests for pro hac vice admissions, but, consistent with the Local Rule, expects local counsel to remain knowledgeable about the case.

**CIVIL CASES**

**Pretrial Procedure**

1. Pretrial Conferences.

Judge Dalzell normally conducts a Rule 16 pretrial conference two weeks after the defendant responds to the Complaint. A copy of Judge Dalzell's Scheduling Policy Statement is attached and accompanies the letter scheduling the conference. Counsel should be prepared to discuss settlement, or the barriers thereto, at the conference, and therefore trial counsel should attend this conference. Judge Dalzell will conduct status conferences, settlement conferences, and final pretrial conferences as needed or as requested in a particular case.

**Continuances and Extensions**

1. General Policy.

Judge Dalzell adheres to the spirit of the Civil Justice Expense and Delay Reduction Plan of the Court. Although Judge Dalzell tries to accommodate counsel with regard to minor amendments regarding the scheduling of briefs, oral arguments, and the like, discovery deadlines and trial dates set at the Rule 16 conference are only changed for weighty cause shown.

2. Requests for Extensions and Continuances.

Requests for extensions of time should be made as far in advance as possible. Judge Dalzell does not grant unopposed requests for extensions of time as a matter of course and

strictly adheres to the requirement of Fed. R. Civ. P. 6(b) that such requests be made "before the expiration" of the originally set deadline. Absent grave emergencies, requests for extensions of trial dates submitted within a month of trial will not be favorably considered.

### **General Motion Practice**

#### **1. Oral Argument on Motions.**

Judge Dalzell holds oral arguments on motions only when he believes it will assist him in deciding the motion. Thus, in all but the rarest of cases, no oral argument is ordered.

#### **2. Reply and Surreply Briefs.**

Judge Dalzell disfavors reply or surreply briefs. Before filing a reply or surreply brief, counsel should obtain permission from the judge.

#### **3. Chambers Copies of Motion Papers.**

Judge Dalzell prefers that courtesy copies of motion papers be delivered to his chambers.

#### **4. Appendices or Exhibits to Briefs or Motions.**

For briefs or motions submitted to Judge Dalzell, counsel should affix tabs to each appendix or exhibit.

### **Discovery Matters**

#### **1. Length of Discovery Period and Extensions.**

Counsel should recognize that the median time from filing through disposition in the Eastern District of Pennsylvania is eight months, and counsel should manage their caseloads accordingly. Except in cases placed on the Special Management Track, or where extraordinary

circumstances exist, Judge Dalzell sets a relatively short discovery deadline, seldom more than ninety days after the Rule 16 conference. Judge Dalzell considers the merits of motions for extension of discovery deadlines, whether opposed or unopposed.

2. Discovery Conferences and Dispute Resolution.

Judge Dalzell expects counsel to resolve discovery disputes between them, and holds discovery conferences only upon request. Except in rare emergencies, Judge Dalzell does not permit telephone conferences to resolve discovery disputes. With respect to discovery motions, Judge Dalzell enforces the Local Rules regarding discovery. Additionally, pursuant to the Local Rule, Judge Dalzell often summarily grants all these discovery motions without waiting for a response, and therefore the burden is on counsel opposing the discovery motion to advise Judge Dalzell's chambers at once that he or she seeks to file a response.

3. Expert Witnesses.

At the Rule 16 conference, Judge Dalzell sets a separate deadline for the exchange of expert witness reports. Judge Dalzell expects that counsel will identify expert witnesses well in advance of trial and that an unavailable expert witness will be videotaped for use at trial. Judge Dalzell does not continue trials because experts are unavailable.

**Settlement**

1. General Approach to Settlement and Non-Jury Cases.

Judge Dalzell takes a very interventionist approach to settlement unless the case is non-jury. In the latter event, Judge Dalzell will refer settlement negotiations to his Magistrate Judge, an agreed-upon district judge, or some other mutually acceptable party. Sometimes Judge

Dalzell will invite the parties' consideration of creative alternatives to trial resolution of their dispute.

### **Arbitration**

#### **1. General Approach to Arbitration Cases.**

Judge Dalzell typically does not conduct Rule 16 pretrial conferences in arbitration cases. He does expect, however, that arbitration trials will be conducted in the "meaningful manner" Local Rule of Civil Procedure 53.2(5)(C) requires.

#### **2. Timing of Motion Practice in Arbitration Cases**

Judge Dalzell will normally deny as untimely any motion filed within fifteen days of a scheduled arbitration, other than motions in limine.

#### **3. Settlement in Arbitration Cases**

Judge Dalzell is available for settlement discussions in arbitration conferences, at the request of any party.

#### **4. Scheduling of Trial De Novo from Arbitration.**

When a trial de novo is granted, Judge Dalzell schedules the case for trial promptly. He will typically hold a pretrial conference within ten days of the filing of the trial de novo demand, and will schedule the trial for a date shortly thereafter.

### **Proposed Final Pretrial Memoranda**

#### **1. Required Form of Pretrial Memoranda.**

Judge Dalzell provides counsel with the appropriate form of pretrial memoranda at the Rule 16 conference. The date for submission of the pretrial material (stipulations, exhibits,

proposed jury instructions, etc.) is provided for in the Scheduling Order entered at the Rule 16 conference. Motions in limine must be filed no later than one week before trial.

2. Common Deficiencies in Pretrial Memoranda.

Judge Dalzell is disappointed at the frequent failure of counsel to make a serious effort to stipulate to as many facts in advance of trial as possible.

**Injunctions**

1. Scheduling and Expedited Discovery.

Judge Dalzell schedules preliminary and permanent injunction hearings promptly, and he attempts to combine the two hearings where possible. He permits expedited discovery on injunctive matters.

2. Proposed Findings of Fact and Conclusions of Law.

Judge Dalzell requires that proposed findings of fact and conclusions of law be submitted to him before the beginning of an injunction hearing.

**Trial Procedure**

1. Scheduling of Cases.

Judge Dalzell sets firm trial dates for each case unless his criminal docket precludes it. Civil jury trials typically begin on Mondays, though sometimes jury selection is done on Fridays. The only event that prevents the actual beginning of a civil trial on the date scheduled would be the interposition of a criminal trial.

2. Conflicts of Counsel.

Judge Dalzell expects counsel to advise him at the Rule 16 conference about any conflicts that may affect the trial schedule. If several counsel are involved in a particular case, Judge Dalzell will specially list the case to assure that all counsel will be available.

3. Cases Involving Out-of-Town Parties or Witnesses.

Generally, Judge Dalzell makes no distinction in scheduling because either counsel or witnesses are from outside the Philadelphia metropolitan area.

4. Notetaking by Jurors.

Judge Dalzell permits jurors to take notes, and jurors have availed themselves of that opportunity in every case.

5. Trial Briefs.

Judge Dalzell allows counsel to submit trial briefs if such briefing would assist the Court.

6. Voir Dire.

Absent an anticipated problem, Judge Dalzell permits counsel to conduct all voir dire in civil cases. If disputes arise during the voir dire, Judge Dalzell handles them in chambers. Except in complex cases, Judge Dalzell expects counsel to complete voir dire in no more than one hour.

7. Side Bars.

Judge Dalzell actively discourages side bars because he, juries, and his court reporter loathe them. Counsel should anticipate problems and discuss with each other the objection and its resolution before bringing it to Judge Dalzell's attention. Except in the rarest of

cases, matters to be discussed outside the jury's hearing can be covered during natural breaks in the trial.

8. In Limine Motions.

Judge Dalzell requires that all motions in limine be filed no later than one week before the commencement of trial.

9. Examination of Witnesses Out of Sequence.

Judge Dalzell will permit counsel to take witnesses out of turn for the convenience of the witnesses.

10. Opening Statements and Summations.

Judge Dalzell encourages counsel to be brief in opening statements. For summations, he expects counsel in civil cases not to exceed twenty to thirty minutes.

11. Examination of Witnesses or Argument  
By More Than One Attorney

Judge Dalzell will permit more than one lawyer to examine different witnesses; however, only one lawyer for a party may examine a particular witness. More than one lawyer for a party may argue different points in a motion.

12. Examination of Witnesses Beyond  
Redirect and Recross

Generally, Judge Dalzell does not allow further examination of witnesses after redirect and recross.

13. Videotaped Testimony.

Rulings on disputes or objections should be sought in advance through submission to Judge Dalzell of a written transcript of the relevant testimony. Counsel should edit the videotape in advance of trial.

14. Reading of Material into the Record.

While Judge Dalzell has no special practice or policy on reading material into the record, he encourages counsel to minimize the time required for reading to the jury.

15. Preparation of Exhibits.

Exhibits should be pre-marked and pre-exchanged and two copies of the exhibits should be delivered to chambers in advance of trial in three-ring binders with tabs to identify each exhibit.

16. Offering Exhibits into Evidence.

Judge Dalzell prefers to have exhibits admitted at natural times during the course of the trial, typically at the close of each party's case.

17. Motions for Verdict as a Matter of Law.

Motions for judgment as a matter of law under Rule 50 may be made either orally or in writing.

18. Proposed Jury Instructions and Verdict Forms.

As part of the pretrial submission, Judge Dalzell requires that counsel submit proposed jury instructions. Unless the trial is very short, Judge Dalzell will share with counsel his draft jury charge in advance of the charge conference. During the charge conference Judge Dalzell considers counsels' suggestions for improvement in his draft.

19. Proposed Findings of Fact and Conclusions of Law.

Judge Dalzell requires the submission of proposed findings of fact and conclusions of law a week in advance of the commencement of trial, and encourages counsel to stipulate to as many findings of fact as possible.

**Jury Deliberations**

1. Written Jury Instructions.

Judge Dalzell invariably gives the jury at least two copies of the substantive portion of the jury charge.

2. Exhibits in the Jury Room.

All exhibits go out with the jury unless counsel agree that some should not be included for reasons, typically, of bulk or possible confusion because of excessive detail.

3. Handling of Jury Requests to Read Back Testimony or Replay Tapes.

Judge Dalzell will allow short portions of testimony to be read back or tapes to be replayed if this is practical under all the circumstances.

4. Availability of Counsel During Jury Deliberations.

Counsel should remain in the courthouse except when the jury take its lunch.

5. Taking the Verdict and Special Interrogatories.

Judge Dalzell typically submits interrogatories to the jury in civil cases, and each juror takes with him or her a copy of the questionnaire.

6. Polling the Jury.

Judge Dalzell permits polling of the jury if counsel makes a timely request.

7. Interviewing the Jury.

After the verdict is recorded, Judge Dalzell advises the jurors that they are under no obligation to speak with counsel, but may do so if they so elect.

### **CRIMINAL CASES**

#### **1. Approach to Oral Argument and Motions.**

Judge Dalzell has no policy on the scheduling of oral argument on motions. He tries to consolidate such arguments with a pretrial conference. Hearings on motions to suppress, or on Starks motions, are held as far in advance of trial as possible; they are rarely held the morning of trial.

#### **2. Pretrial Conferences.**

Generally, Judge Dalzell does not hold pretrial conferences in every criminal case; he often finds it most helpful to hold a motions hearing at least one or two weeks before the start of trial.

#### **3. Voir Dire.**

Judge Dalzell conducts voir dire in criminal cases. He requests that counsel submit proposed voir dire questions at least a day in advance of trial for his consideration.

#### **4. Other Practices and Procedures.**

If either the Government or defense counsel takes exception to any aspect of the presentence investigation report, Judge Dalzell encourages the submission of sentencing memoranda at least one week in advance of the sentencing hearing. He also encourages the Government to file § 5K1.1 motions as far in advance of sentencing hearings as possible.

## **OTHER GENERAL MATTERS**

### 1. Appellate Briefs.

Counsel may submit appellate briefs to Judge Dalzell if they wish.

### 2. Courtroom Decorum.

Judge Dalzell expects counsel to be punctual and courteous to each other at all times. He has no patience for posturing, grandstanding or contesting evidentiary rulings after they are made.

### 3. Ex-Parte Temporary Restraining Orders.

Absent exceptional circumstances, Judge Dalzell has a strong policy against granting ex parte temporary restraining orders.

### 4. Stipulations.

Judge Dalzell energetically enforces the Local Rule regarding written stipulations.